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## RECOGNITION OF FOREIGN JUDGMENTS IN CHINA: THE *LIU* CASE AND THE “BELT AND ROAD” INITIATIVE

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RECOGNITION OF FOREIGN JUDGMENTS IN CHINA: THE *LIU*  
CASE AND THE “BELT AND ROAD” INITIATIVE

*Ronald A. Brand\**

ABSTRACT

In June, 2017, the Wuhan Intermediate People’s Court became the first Chinese court to recognize a U.S. judgment in the case of *Liu Li v. Tao Li & Tong Wu*. The *Liu* case is a significant development in Chinese private international law, but represents more than a single decision in a single case. It is one piece of a developing puzzle in which the law on the recognition and enforcement of foreign judgments in China is a part of a larger set of developments. These developments are inextricably tied to the “One Belt and One Road,” or “Belt and Road” Initiative first announced by Chinese President Xi Jinping on a visit to Kazakhstan in 2013. This article traces the development of the *Liu* case, from the first judgment in California to the decision to recognize and enforce that judgment in Wuhan, China. It then provides the context within which the decision on recognition and enforcement was made, and the way the decision fits within President Xi’s “Belt and Road” Initiative and the pronouncements of the Chinese People’s Supreme Court which have encouraged the recognition and enforcement of foreign judgments as part of that Initiative.

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## I. INTRODUCTION

On June 30, 2017, the Wuhan Intermediate People's Court recognized and enforced a judgment from the Los Angeles Superior Court. This is the first recorded case in which a Chinese court has recognized a U.S. judgment for monetary damages. That alone is a significant event. The context of the case in terms of other Chinese legal developments, however, indicates that the case itself may be only one part of a broader effort to use private international law in order to make China a more global player. A greater openness to foreign judgment recognition can be seen as operating in parallel to enhance other recent changes in Chinese trade relations policy.

The case of *Liu Li v. Tao Li & Tong Wu*,<sup>1</sup> appears to be one piece in a set of developments that indicate a broadened role for China in the realm of private international law. This set of developments includes the September 2013 introduction by Chinese President Xi Jinping of the Silk Road Economic Belt concept during a visit to Kazakhstan; the March, 2015 Vision and Action Plan on the Belt and Road Initiative; developments in the recognition of Singaporean judgments under a reciprocity analysis; important announcements from the Supreme People's Court; China's 2017 signature to the 2005 Hague Choice of Court Convention; and the announcement in early 2018 that China intends to establish specialized international commercial courts to supplement the Belt and Road Initiative. All of these developments indicate a newfound desire to make China a player in the recognition and enforcement of foreign judgments, and perhaps in broader aspects of the development of private international law.

In the following discussion I first consider the history of the *Liu* case, from Los Angeles to Wuhan. I follow with a brief review of the *Liu* judgment in Wuhan. Next, I describe the related recent developments in Chinese law that set the context for a broader understanding of the importance of the *Liu* decision.

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<sup>1</sup> Liú lì sù táo lǐ hé wú tóng (刘莉诉桃李和吴彤) [*Liu Li v. Tao Li & Tong Wu*], Intermediate People's Court of Wuhan, Hubei Province, China (Wuhan Interim. People's Ct. June 30, 2017). An English translation by Yuting Xu is attached as an appendix to this article.

II. *LIU LI V. TAO LI & TONG WU*, INTERMEDIATE PEOPLE'S COURT OF  
WUHAN, HUBEI PROVINCE, CHINA, JUNE 30, 2017

A. *The Course of the Litigation*

1. *The Path to the Wuhan Court*

In September of 2013, Tao Li and his wife, Tong Wu, agreed that Tao would transfer 50% of the shares of Jiajia Management Inc., to Liu Li, for \$150,000.<sup>2</sup> Liu paid \$125,000 in accordance with the agreement, but Tao did not transfer the shares. Tao deposited the \$125,000 into his wife Tong's bank account.<sup>3</sup>

In July 2014, Liu filed suit against Tao and Tong in Los Angeles Superior Court, seeking return of the funds.<sup>4</sup> When Liu was unable to serve Tao and Tong personally, he requested and received court authorization to effect service by publication in early 2015. In July 2015, the Los Angeles Superior Court issued a default judgment in favor of Liu, against Tao and Tong, for the return of the \$125,000 payment, and for \$20,818 as pre-judgment interest and \$1,674 as costs, for a total of \$147,492.<sup>5</sup>

Later in 2015, after being unable to collect the judgment in the United States, Liu followed Tao and Tong to Wuhan, China, where they were then resident, and brought an action in Wuhan Intermediate Court, seeking recognition and enforcement of the Los Angeles judgment plus post-judgment interest. On June 30, 2017, the Wuhan Court issued its decision, holding that the California judgment would be recognized and enforced in China.<sup>6</sup>

2. *The Wuhan Court's Liu Decision*

In reaching its decision to recognize and enforce the Los Angeles judgment, the Wuhan court applied Articles 281 and 282 of the Civil

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Procedure Law of the People's Republic of China. Those provisions read as follows:

Article 281

If a legally effective judgment or written order made by a foreign court requires recognition and enforcement by a People's Court of the People's Republic of China, the party concerned may directly apply for recognition and enforcement to the Intermediate People's Court of the People's Republic of China, which has jurisdiction. The foreign court may also, in accordance with the provisions of the international treaties concluded or acceded to by that foreign country and the People's Republic of China or with the principle of reciprocity, request recognition and enforcement by a People's Court.<sup>7</sup>

Article 282

In the case of an application or request for recognition and enforcement of a legally effective judgment or written order of a foreign court, the People's Court shall, after examining it in accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity and arriving at the conclusion that it does not contradict the primary principles of the law of the People's Republic of China nor violates State sovereignty, security, and social and public interest of the country, recognize the validity of the judgment or written order, and, if required, issue a writ of enforcement to execute it in accordance with the relevant provisions of this law; if the application or request contradicts the primary principles of the law of the People's Republic of China or violates State sovereignty, security, and social and public interest of the country, the people's court shall not recognize and execute it.<sup>8</sup>

Applying Article 281, the Wuhan court determined that jurisdiction existed as the defendants resided within the jurisdiction of the court and owned real property there.<sup>9</sup> The court then turned to Article 282, which begins by requiring either a treaty or reciprocity in order to grant recognition and enforcement, and then states bases for non-recognition if the judgment conflicts with "primary principles of the law" of the PRC or otherwise violates Chinese sovereignty, security, or social and public interest.<sup>10</sup>

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<sup>7</sup> Zhōnghuá rénmin gònghéguó mínshì sùsòng fǎ (中华人民共和国民事诉讼法) [Civil Procedure Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 9, 1991, effective Apr. 9, 1991), art. 281, [http://www.chinalaw.gov.cn/art/2017/7/5/art\\_11\\_205602.html](http://www.chinalaw.gov.cn/art/2017/7/5/art_11_205602.html).

<sup>8</sup> *Id.* art. 282.

<sup>9</sup> Lǐú, *supra* note 1.

<sup>10</sup> *Id.*

Acknowledging that there exists no treaty between China and the United States on the recognition and enforcement of judgments, the Wuhan court addressed the initial qualification of the Los Angeles judgment for recognition and enforcement on the basis of reciprocity.<sup>11</sup> The court noted that the judgment creditor “has provided evidence of U.S. court precedent that recognized and enforced a Chinese judgment, which shows the reciprocal relationship of mutual recognition and enforcement has been established between the two countries.” This evidence involved a judgment of the Hubei People’s Supreme Court in the case of *Hubei Gezhouba Sanlian Industrial Co., Ltd. et al. v. Robinson Helicopter Co., Inc.*,<sup>12</sup> which had been recognized and enforced by the U.S. Federal District Court for the Central District of California, in a decision affirmed by the Ninth Circuit U.S. Court of Appeals in 2011.<sup>13</sup>

In resisting recognition and enforcement in China, Tao and Tong argued that (1) the Los Angeles court had made incorrect substantive determinations about the nature of the contractual relationship and the performance of the contract, (2) the notice provided in the Los Angeles proceedings was insufficient, and (3) the Los Angeles judgment was a default judgment and therefore not subject to recognition. The Wuhan court rejected each of these claims, (1) noting that it would not reopen the Los Angeles court’s decision on the merits, (2) accepting the Los Angeles court’s determination that Tao and Tong were “properly summoned,” and (3) determining that the mere fact that the Los Angeles judgment was a default judgment did not present obstacles to recognition and enforcement.<sup>14</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Húběi gézhōubà sānlíán wútóng. Gōngsī sù luōbīnxùn zhíshēngjī gōngsī (湖北葛洲坝三联梧桐·公司诉罗宾逊直升机公司 [Hubei Gezhouba Sanlian Indus. Co. v. Robinson Helicopter Co.], E Min Si Chu Zi No. 1 (Civil Judgment, The Higher People’s Court of Hubei Province, 2001); see also Jie Huang, *Chinese Court Unprecedentedly Recognized and Enforced a U.S. Commercial Monetary Judgment*, CHINA INT’L BUS. & ECONOMIC L. (2017), <http://www.cibel.unsw.edu.au/cibel-blog/chinese-court-unprecedentedly-recognized-and-enforced-us-commercial-monetary-judgment>.

<sup>13</sup> *Hubei Gezhouba Sanlian Indus., Co. v. Robinson Helicopter Co.*, 425 F. App’x 580, 581 (9th Cir. 2011).

<sup>14</sup> Liú, *supra* note 1.

### *B. Six Important Aspects of the Liu Decision*

#### *1. Novelty as Notable: First Ever Recognition and Enforcement of a U.S. Judgment*

From a U.S. perspective, there are at least six aspects of the Wuhan Intermediate Court's decision in the *Liu* case which make it both interesting and instructive in terms of future efforts to seek recognition and enforcement of a U.S. judgment in China. The first of these is simply that the decision is the first time a Chinese court has granted recognition and enforcement of a U.S. money judgment. This challenges the common assumption that it simply is not possible to obtain such a result in China for a U.S. judgment.<sup>15</sup>

#### *2. Recognition and Enforcement Without a Treaty*

The second interesting aspect of the Wuhan judgment is that it authorized recognition and enforcement in the absence of a treaty obligation to provide such a result. It is not uncommon for national law to require a treaty obligation before granting recognition and enforcement of a foreign judgment, and no such treaty exists between China and the United States. As the Wuhan decision makes clear, however, Articles 281 and 282 of China's Civil Procedure Code authorize recognition and enforcement based on either a treaty obligation or a finding of reciprocity. The difficulty has been in proving the existence of reciprocity.

#### *3. Finding Reciprocity to Exist*

The Wuhan court's reliance on principles of reciprocity is the third interesting aspect of the decision. Because China's Civil Procedure Code authorizes recognition based on reciprocity, and because there was no applicable treaty obligation, the court necessarily had to determine if

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<sup>15</sup> See, e.g., Béligh Elbalti, *Reciprocity and the Recognition and Enforcement of Foreign Judgments: A Lot of Bark But Not Much Bite*, 13 J. PRIV. INT'L L. 184, 201 (2017) ("The problem is that, in practice, and in the absence of an applicable international treaty, Chinese courts have regularly denied recognition of foreign judgments on the basis of reciprocity.").

reciprocity existed for the Los Angeles judgment. The court did so by considering the recognition of a judgment from the Hubei People's Supreme Court,<sup>16</sup> which had been recognized and enforced by the U.S. District Court for the Central District of California.<sup>17</sup> This approach to the question of reciprocity was in some ways broad and in other ways necessarily narrow. The case recognized in the United States came from the Hubei People's Supreme Court. While the Wuhan Intermediate People's Court is also in Hubei Province, it is not the same court. Moreover, the U.S. decision relied upon to prove reciprocity was from a federal court in California, not from a California state court. The Wuhan court considered that decision satisfactory, however, to prove reciprocity for purposes of recognizing a judgment from a California state court. Whether this would also apply for judgments from U.S. courts (state or federal) outside of California remains to be seen.

#### *4. Recognizing a Default Judgment*

The fourth interesting aspect of the Wuhan decision is that the court clearly had no problem with the fact that the California judgment was a default judgment. In some countries, default judgments are not subject to recognition and enforcement.<sup>18</sup> This is not the rule in the United States,<sup>19</sup> where the policy is that even default judgments are fair game for recognition and enforcement because any other rule would allow a party simply to avoid an appearance in the foreign court and then improperly avoid recognition and enforcement.

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<sup>16</sup> Hubei Gezhouba Sanlian Indus. Co. v. Robinson Helicopter Co., E Min Si Chu Zi No. 1 (Civil Judgment, The Higher People's Court of Hubei Province, 2001).

<sup>17</sup> Hubei Gezhouba Sanlian Indus., Co., 425 F. App'x at 581.

<sup>18</sup> See, e.g., Committee Report, Committee on Foreign and Comparative Law, Association of the Bar of the City of New York, Survey on Foreign Recognition of U.S. Money Judgments, at 14 (July 31, 2001) ("[T]he general rule in a number of jurisdictions seems to be that foreign default judgments will not be recognized on the grounds that they do not afford a defendant the opportunity to be heard."). A specific example is found in the UAE Code of Civil Procedure, Federal Law No. 11 of 1992, art. 235(2)(d), which provides that a judgment will be recognized and enforced only if "the opposing parties in the case in which the foreign judgment has been given have been summoned to appear, and have duly appeared."

<sup>19</sup> See, e.g., *Somportex Ltd. v. Phila. Chewing Gum Corp.*, 453 F.2d 435 (3d Cir. 1971), cert. denied, 405 U.S. 1017 (1972) (granting recognition to a United Kingdom default judgment).



### 5. *Service by Publication*

The fifth aspect of the Wuhan decision that makes it particularly interesting is the manner in which the Wuhan court dealt with the fact that service in California had been by publication. While this issue receives limited discussion in the Wuhan decision, the court twice makes reference to it, and the combination seems to provide clear deference to the U.S. court in determining proper service. In the discussion of the Los Angeles judgment, the Wuhan decision notes that “[o]n 24 July 2015, Judge William D. Stewart issued a default judgment, holding that Tao and Tong had been properly summoned and did not appear in the court to respond to the applicant’s complaint.”<sup>20</sup> Later in its opinion, the Wuhan court specifically “holds that the Los Angeles Superior Court has properly summoned Tao and Tong in the U.S. and this argument is not supported.”<sup>21</sup> This combination of references indicates a significant level of deference to the U.S. court in determining proper service, and demonstrates satisfaction on the part of the Wuhan court that service by publication, after unsuccessful efforts at personal service, is sufficient.

### 6. *No Review of the Merits*

The sixth aspect of the Wuhan decision that is noteworthy is the court’s specific rejection of the defendants’ effort to seek a review of the merits. The court was very clear in stating that no review of the merits would be allowed: “This case is a case of judicial assistance, the court has no need to review of the relationship between the rights and obligations of each of the parties. Where the U.S. court has made a judgment about this issue, the court shall not consider the merits of that judgment.”<sup>22</sup>

## III. FURTHER CONTEXT FOR *LIU* DECISION

While the *Liu* decision of the Wuhan Intermediate People’s Court is significant simply because it involves the recognition and enforcement of a U.S. judgment by a Chinese court, the decision itself is only one part of a

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<sup>20</sup> Liú, *supra* note 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

larger package of developments signaling an even broader change in Chinese law on the recognition and enforcement of judgments. This package includes developments specifically concerned with judgments recognition as well as developments that have broader impact but are important to the development of judgments recognition law when connected with other parts of the package. Those developments may be divided into judicial decisions prior to the *Liu* decision and pronouncements related to the Belt and Road initiative. It is the combination of the two tracks of developments that provide significance to the *Liu* decision in a broader context.

#### *A. Judicial Decisions Prior to the Liu Decision*

As noted in the above discussion of the *Liu* decision, Articles 281 and 282 of the Civil Procedure Law of the People's Republic of China provide for recognition of a foreign judgment only upon proof of reciprocity, which may be either *de jure* reciprocity through a treaty, or *de facto* reciprocity determined by the court.<sup>23</sup> China has 37 bilateral judicial assistance treaties, most of which contain provisions for reciprocal recognition and enforcement of judgments.<sup>24</sup> The United States is not a party to such a treaty with the PRC. Thus, reciprocity must be determined on a *de facto* basis.

Until relatively recently it was difficult to find any Chinese case recognizing and enforcing a foreign judgment. It is reported that decisions had specifically refused recognition and enforcement to judgments from Australia,<sup>25</sup> Germany,<sup>26</sup> Japan,<sup>27</sup> Korea,<sup>28</sup> Malaysia,<sup>29</sup> and the United

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<sup>23</sup> *Id.*; art. 281, *supra* note 7.

<sup>24</sup> See Suni Gong, *The Chinese Court's Enforcement of a U.S. Civil Judgment*, NYU TRANSNAT'L NOTES BLOG (Apr. 17, 2018), <https://blogs.law.nyu.edu/transnational/2018/04/the-chinese-courts-enforcement-of-a-u-s-civil-judgment/> (A list of the PRC's bilateral judicial assistance treaties may be found on the Foreign Ministry's website: [https://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/zjzg\\_663340/tyfls\\_665260/tyfl\\_665264/2631\\_665276/t39537.shtml](https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zjzg_663340/tyfls_665260/tyfl_665264/2631_665276/t39537.shtml)).

<sup>25</sup> Gong, *supra* note 24 (citing cases from each of the mentioned jurisdictions).

<sup>26</sup> *Id.* (discussing Min Si Ta Zi No. 81).

<sup>27</sup> Yahan Wang, *A Turning Point of Reciprocity in China's Recognition and Enforcement of Foreign Judgments: A Study of the Kolmar Case*, 35 NEDERLANDS INTERNATIONAAL PRIVAATRECHT 772, 780 n.56 (2017); Gong, *supra* note 24 n.7 (discussing *Gomi Akira v. Dalian Fari Seafood Ltd.*).

<sup>28</sup> Wang, *supra* note 27 n.55 (discussing the Application by Zhang Xiaoxi for Recognition of Civil Judgment by Korean Court, the Shenyang Intermediate People's Court); Gong, *supra* note 24, n.8.

<sup>29</sup> Wang, *supra* note 27 n.57 (discussing the Application by Kan Weng Beng for Recognition and Enforcement of Civil Judgment by Malaysian Court).

Kingdom,<sup>30</sup> all based on the lack of *de facto* reciprocity.<sup>31</sup> Notably, however, the case cited for non-recognition of a German judgment may have provided the first step in opening the Chinese judicial approach to foreign judgments where no *de jure* treaty reciprocity exists. In *Hukla Matratzen GmbH v. Beijing Hukla Ltd.*,<sup>32</sup> a German trustee in bankruptcy applied for recognition of a German judgment. The Chinese court apparently determined that the 2006 recognition of a Chinese judgment (from the Wuxi District Court) by the Court of Appeal of Berlin in *German Züblin International Co Ltd v. Wuxi Walker General Engineering Rubber Co., Ltd.*<sup>33</sup> satisfied the reciprocity requirement, but then denied recognition based on a failure to obtain proper service.<sup>34</sup>

The seemingly general and complete lack of recognition of foreign judgments by Chinese courts began to change in 2012, when the Wuhan Intermediate People's Court recognized a judgment of the Montabaur District Court of Germany, basing reciprocity on the Berlin High Court decision in the *Züblin* case from 2006.<sup>35</sup> The Wuhan decision, however, was unpublished, and thus may have limited impact in the Chinese legal system.<sup>36</sup>

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<sup>30</sup> ZHENG SOPHIA TANG, YONGPING XIAGO & ZHENGZIN HUO, CONFLICT OF LAWS IN THE PEOPLE'S REPUBLIC OF CHINA 163 n.88; Wang, *supra* note 27 n.54.

<sup>31</sup> See Gong, *supra* note 24 (citing cases involving judgments from Australia, Germany, Japan, Korea, and the United Kingdom); see also TANG, XIAGO & HUO, *supra* note 30 ("Based on the lack of *de facto* reciprocity, Chinese courts refused (either expressly or impliedly) to recognize and enforce judgments rendered in the court of Japan, Germany, England, Australia, the United States, and Hong Kong before the China-Hong Kong Arrangement entered into force."); Yahan Wang, *A Turning Point of Reciprocity in China's Recognition and Enforcement of Foreign Judgments: A Study of the Kolmar case*, 2017.4 NEDERLANDS INTERNATIONAAL PRIVAATRECHT 772, 780–81 (2017) (citing cases involving judgments from Australia, Japan, Korea, Malaysia, and the United Kingdom. Wang reports that "the [Chinese] courts where enforcement of a foreign judgment was sought, did not even check whether a precedent between China and the rendering country existed. Instead, they merely invoked the relevant provisions of the CPL, before concluding that no relevant treaty was in place.").

<sup>32</sup> Wenliang Zhang, *Sino-Foreign Recognition and Enforcement of Judgments: A Promising "Follow-Suit" Model?*, 16 CHINESE J. INT'L L. 515 (2017) (discussing the *Hukla Matratzen GmbH v. Beijing Hukla Ltd.* case).

<sup>33</sup> See TANG, XIAGO & HUO, *supra* note 30, at 162; Zhang, *supra* note 32, at 515 (for further discussion of both the *Züblin* and *Hukla* cases).

<sup>34</sup> See Zhang, *supra* note 32, at 537–38 (the Supreme People's Court seemed to affirm the lower court's implied acceptance of reciprocity with Germany, when its opinion was sought by the lower court and it replied by noting only the defect in service of process).

<sup>35</sup> See Gong, *supra* note 24; Zhang, *supra* note 32, at 25 n.99.

<sup>36</sup> See Wang, *supra* note 27, at 773 n.4; but see Zhang, *supra* note 32, at 539–44 ("As the first case in which a foreign judgment was recognized in China without the assistance of a bilateral or multilateral treaty arrangement, the perennial reciprocity problem that has lasted for more than two decades in China

The most significant judicial development prior to the *Liu* decision came in *Kolmar Group AG v. Jiangsu Textile Industry Import and Export Corporation*,<sup>37</sup> decided by the Nanjing Intermediate People's Court in 2016. In *Kolmar*, the Nanjing Court was asked to recognize and enforce a judgment from the Singapore High Court. *De facto* reciprocity was found to exist based on the 2014 decision by the Singapore High Court in *Giant Light Metal Technology (Kunshan) v. Aksa Far East*,<sup>38</sup> which had granted recognition and enforcement to a commercial money judgment issued by the Intermediate People's Court of Suzhou City in Jiangsu Province.<sup>39</sup> *Kolmar* was thus the first published Chinese decision providing for recognition and enforcement of a foreign judgment based on *de facto* reciprocity.

### *B. Non-Judicial Developments: The Belt and Road Initiative*

Judicial developments alone do not tell the entire story of the recent evolution of the law on the recognition and enforcement of foreign judgments in China. Further developments related to larger initiatives provide a context that aids in the understanding of the *Liu* decision and the development of the law generally.

#### *1. Chinese President Xi Jinping's September 2013 Introduction of the Silk Road Economic Belt Concept*

On September 7, 2013 Chinese President Xi Jinping delivered a speech at Nazarbayev University in Kazakhstan, in which he proposed building a "Silk Road Economic Belt."<sup>40</sup> This seemingly out-of-the-way event in an out-

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has finally found a means of resolution in this 2013 case, and the long-debated reciprocity issue was encouragingly tested in a positive way. Undoubtedly, this is a great step forward in the history of Chinese courts' recognition of foreign judgments.").

<sup>37</sup> Gāo ěr jítuán gǔfēn yǒuxiàn gōngsī shēnqǐng chéngrèn hé zhíxíng xīnjiāpō gāoděng fǎyuàn mínshì pànjúé (高尔集团股份有限公司申请承认和执行新加坡高等法院民事判决) [Kolmar Group AG, A Case of an Application for the Recognition and Enforcement of a Civil Judgment of the High Court of Singapore], STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, B&R Cases™, Typical Case 13 (TC13) (Mar. 1, 2018), <http://cgc.law.stanford.edu/belt-and-road/b-and-r-cases/typical-case-13>.

<sup>38</sup> *Giant Light Metal Tech. (Kushan) v. Aksa Far E. Pte. Ltd.*, [2014] SLR 545 (Sing.).

<sup>39</sup> Wang, *supra* note 27.

<sup>40</sup> Zhang Lulu, *Chronology of China's Belt and Road Initiative*, CHINA.ORG (Jan. 5, 2017), [http://www.china.org.cn/china/2017-01/05/content\\_40044651.htm](http://www.china.org.cn/china/2017-01/05/content_40044651.htm).

of-the-way country has since mushroomed into the keystone policy initiative of the Xi presidency.

On Oct. 3, 2013, President Xi expanded the geographic scope of his initiative by complementing the Silk Road land route with a “Maritime Silk Road,” in a speech at the Indonesian parliament.<sup>41</sup> While much that followed focused on the infrastructure necessary to recreate the land route from China to Europe and a separate sea route with a similar purpose,<sup>42</sup> the undertaking became a sort of catchall for much more than new openings for international trade and investment for China. It grew to include developments in law in particular that can be seen as enhancing both international trade and China’s image in the global community.

## *2. The March 2015 Vision and Action Plan on the Belt and Road Initiative*

On March 28, 2015, the National Development and Reform Commission, the Ministry of Foreign Affairs, and the Ministry of Commerce of the People’s Republic of China, with State Council authorization, issued a document titled “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road.”<sup>43</sup> The Vision and Action Plan described the Belt and Road Initiative as a cooperative effort, to be led by China, to promote trade, development, and regional cooperation in the countries geographically connected by the dual land and sea routes, but also as a spur to global development:

The initiative to jointly build the Belt and Road, embracing the trend towards a multipolar world, economic globalization, cultural diversity and greater IT application, is designed to uphold the global free trade regime and the open world economy in the spirit of open regional cooperation. It is aimed at promoting orderly and free flow of economic factors, highly efficient allocation of resources and deep integration of markets; encouraging the countries along the Belt and Road to achieve economic policy coordination and carry out broader and more in-depth regional cooperation of higher standards; and jointly creating an open, inclusive and balanced regional economic cooperation architecture that benefits all. Jointly building the Belt and Road is in the interests of the world community.

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> NAT’L DEV. & REFORM COMM’N, *Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road*, NRDC.GOV.CN (Mar. 28, 2015), [http://en.ndrc.gov.cn/newsrelease/201503/t20150330\\_669367.html](http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html).

Reflecting the common ideals and pursuit of human societies, it is a positive endeavor to seek new models of international cooperation and global governance, and will inject new positive energy into world peace and development.

The Belt and Road Initiative aims to promote the connectivity of Asian, European and African continents and their adjacent seas, establish and strengthen partnerships among the countries along the Belt and Road, set up all-dimensional, multi-tiered and composite connectivity networks, and realize diversified, independent, balanced and sustainable development in these countries. The connectivity projects of the Initiative will help align and coordinate the development strategies of the countries along the Belt and Road, tap market potential in this region, promote investment and consumption, create demands and job opportunities, enhance people-to-people and cultural exchanges, and mutual learning among the peoples of the relevant countries, and enable them to understand, trust and respect each other and live in harmony, peace and prosperity.

China's economy is closely connected with the world economy. China will stay committed to the basic policy of opening-up, build a new pattern of all-round opening-up, and integrate itself deeper into the world economic system. The Initiative will enable China to further expand and deepen its opening-up, and to strengthen its mutually beneficial cooperation with countries in Asia, Europe and Africa and the rest of the world. China is committed to shouldering more responsibilities and obligations within its capabilities, and making greater contributions to the peace and development of mankind.<sup>44</sup>

The Plan effectively took the Belt and Road Initiative global, stating: "The Initiative is open for cooperation. It covers, but is not limited to, the area of the ancient Silk Road. It is open to all countries, and international and regional organizations for engagement, so that the results of the concerted efforts will benefit wider areas."<sup>45</sup>

### *3. Guidance from the PRC Supreme People's Court*

#### *a. June 2015: Several Opinions of the Supreme People's Court on Providing Judicial Services and Safeguards for the Construction of the 'Belt and Road' by People's Courts*

On June 16, 2015, the Chinese Supreme People's Court issued "Several Opinions of the Supreme People's Court on Providing Judicial Services and

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

Safeguards for the Construction of the ‘Belt and Road’ by People’s Courts.”<sup>46</sup> The first part of this document carried the title “Unifying Thoughts, Deepening Understanding, and Effectively Enhancing the Sense of Responsibility and Mission for Providing Judicial Services and Safeguards for the Construction of the ‘Belt and Road.’”<sup>47</sup> Here the text specifically brought the Chinese courts into the Belt and Road Initiative:

The implementation of the construction of the “Belt and Road” is to produce practical and far-reaching impacts on initiating China’s new pattern of all dimensional opening to the outside world, driving economic growth, and promoting peaceful development. *In the construction of the “Belt and Road,” rule by law is an important safeguard and judicial functions are indispensable.* The people’s courts at various levels shall thoroughly study and implement major decisions on the construction of the “Belt and Road” of the Party and state as well as a series of important exposition made by the General Secretary Xi Jinping, fully comprehend the honorable duties they shoulder, voluntarily undertake the mission of the age, and take the initiative to serve and integrate in the construction process of the “Belt and Road.”<sup>48</sup>

This section goes on to state:

The people’s courts shall accurately comprehend the connotation and basic requirements of judicial services and safeguards for the construction of the “Belt and Road.” They shall actively respond to the judicial concerns and demands of both Chinese and foreign market players, greatly strengthen the judicial review of foreign-related criminal, civil and commercial, maritime, and international commercial and maritime arbitrations and the trial of free trade zone-related cases, and create a sound legal environment for the construction of the “Belt and Road.” They shall implement the legal principle of legal equality in a comprehensive manner, uphold the equal protection of the lawful rights and interests of Chinese and foreign parties, and make efforts to effectively maintain the regional cooperation environment for fair competition, integrity, and harmony and win-win.<sup>49</sup>

This seeming liberalization of the role of Chinese courts is tempered in the second section of the document, where emphasis is placed on the role of the courts in criminal cases, and the language suggests a less-than-liberal approach:

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<sup>46</sup> SUP. PEOPLE’S CT., *Several Opinions of the Supreme People’s Court on Providing Judicial Services and Safeguards for the Construction of the “Belt and Road” by People’s Courts*, PEKING UNIVERSITY LAW SCHOOL (June 15, 2015), <http://en.pkulaw.cn/display.aspx?cgid=251003&lib=law>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* ¶ 1 (emphasis added).

<sup>49</sup> *Id.* ¶ 2.

The people's courts shall bring the functions and roles of criminal trials into full play and create a harmonious and stable social environment for the construction of the "Belt and Road." They shall strengthen the criminal trial work, deepen the criminal judicial cooperation with countries along the "Belt and Road," severely crack down on violent and terrorist forces, separatist forces, and religious extremist forces, and severely punish such cross-boundary crimes as piracy, drug trafficking, smuggling, money laundering, telecommunication fraud, cyber crime, and human trafficking.<sup>50</sup>

This too is tempered by reference to international standards and the suggestion that this process "withstands the tests of law and history."<sup>51</sup>

In its fifth paragraph, the document moves into the realm of private international law. While it does not explicitly refer to either the applicable law or judgments recognition pillars of the private international law trilogy (jurisdiction, applicable law, and recognition of judgments), it does deal with the first pillar—jurisdiction. And it does so in a manner that provides some deference to party autonomy in private relationships:

The people's courts shall exercise jurisdiction according to the law and provide Chinese and foreign market players with timely and effective judicial remedies. They shall fully respect the right of Chinese and foreign market players engaging in the construction of the "Belt and Road" to select jurisdiction by agreement and by amicable negotiation with countries along the "Belt and Road" and thoroughly carrying out judicial cooperation, reduce international conflicts in foreign-related jurisdiction, and properly resolve issues of international parallel proceedings. They shall observe international treaties and practices, determine connecting factors of cases involving countries along the "Belt and Road" in a scientific and reasonable manner, and exercise jurisdiction according to the law.<sup>52</sup>

It is, however, in the sixth paragraph that the document explicitly calls for change in judicial practice regarding the recognition of foreign judgments:

The people's courts shall strengthen international judicial assistance with countries along the "Belt and Road" and effectively safeguard the lawful rights and interests of Chinese and foreign parties. They shall positively explore and strengthen regional judicial assistance, cooperate with the relevant departments in releasing the model texts of new-type judicial assistance agreements at appropriate time, promote the conclusion of bilateral and multilateral judicial assistance agreements, and *promote the mutual recognition and enforcement of judgments*

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<sup>50</sup> *Id.* ¶ 3.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* ¶ 5.



*rendered by countries along the “Belt and Road.”* Under the circumstance where some countries have not concluded judicial assistance agreements with China, on the basis of the international judicial cooperation and communication intentions and the counterparty’s commitment to offering mutual judicial benefits to China, the people’s courts of China may consider the prior offering of judicial assistance to parties of the counter party, positively promote the formation of reciprocal relationship, and actively initiate and gradually expand the scope of international judicial assistance. The people’s courts shall, in strict accordance with the international treaties concluded between China and countries along the “Belt and Road” or jointly participated in by them, actively handle such judicial assistance requests as service of judicial documents, investigation and evidence collection, and recognition and enforcement of judgments rendered by foreign courts, and provide efficient and convenient judicial remedies for the lawful rights and interests of Chinese and foreign parties.<sup>53</sup>

*b. May 2017: Belt and Road Typical Case 13*

On May 15, 2017, the Supreme People’s Court gave heightened effect to the *Kolmar* decision of the Nanjing Intermediate People’s Court, when it published the case as part of the Second Batch of Typical Cases Involving the “Belt and Road” Construction.<sup>54</sup> By publishing the decision as a Typical Case, the Supreme People’s Court enhanced its significance. As one Chinese scholar on judgments recognition has stated:

In China, cases are not binding precedents, but the SPC has been playing a very important role by clarifying its stance on typical cases. . . . On several occasions, the SPC has taken a stance concerning the REJ in China that significantly affects or even directs the ensuing judicial practice across the country. Chinese courts, with the SPC in the lead, have taken various opportunities to fill in the blanks left in the abovementioned Chinese REJ laws through their authority to interpret the laws.<sup>55</sup>

*c. The Nanning Statement of June 2017*

On June 8, 2017, the Supreme People Court hosted the 2nd China-ASEAN Justice Forum in Nanning Guangxi Zhuang Autonomous Region. The resulting “Nanning Statement” included commitments to judicial

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<sup>53</sup> *Id.* ¶ 6 (emphasis added).

<sup>54</sup> *Kolmar Group AG*, *supra* note 37.

<sup>55</sup> Zhang, *supra* note 32, at 20–21.

cooperation between China and the Member States of ASEAN.<sup>56</sup> Moreover, the language of the Statement explicitly called for a presumption of reciprocity, even in the absence of a treaty:

Regional cross-border transactions and investments require a judicial safeguard based on appropriate mutual recognition and enforcement of judicial judgments among countries in the region. Subject to their domestic laws, Supreme Courts of participating countries will keep good faith in interpreting domestic laws, try to avoid unnecessary parallel proceedings, and consider facilitating the appropriate mutual recognition and enforcement of civil or commercial judgements among different jurisdictions. *If two countries have not been bound by any international treaty on mutual recognition and enforcement of foreign civil or commercial judgments, both countries may, subject to their domestic laws, presume the existence of their reciprocal relationship, when it comes to the judicial procedure of recognizing or enforcing such judgments made by courts of the other country, provided that the courts of the other country had not refused to recognize or enforce such judgments on the ground of lack of reciprocity.*<sup>57</sup>

#### IV. THE *Liu* DECISION IN CONTEXT: THEN AND NOW

While the *Liu* decision may have been surprising to some given past practice of Chinese courts when faced with the question of recognition and enforcement of a foreign judgment, the context provided by President Xi's Belt and Road Initiative, and the related pronouncements of the Supreme People's Court place the case in line with recent developments generally. If one considers the Supreme People's Court designation of the *Kolmar* decision as a Typical Case in May of 2017, followed by the Nanning Statement on June 8, 2018, then the Wuhan Intermediate Court's decision on June 30, 2017 to recognize and enforce a United States judgment seems much more consistent with the legal context of the time in China. The Wuhan Intermediate Court seems simply to have been taking its cues from sources it is bound to recognize as important in rendering decisions.

This process of liberalization of the law of recognition and enforcement of foreign judgments has continued after the *Liu* case, with additional developments. On September 12, 2017, the People's Republic of China signed the 2005 Hague Convention on Choice of Court agreements, a treaty

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<sup>56</sup> Special Bull. of the Sup. Ct., Nanning Statement of the 2nd China-ASEAN Justice Forum, [http://supremecourt.gov.af/Content/files/Bulletin\\_81.pdf](http://supremecourt.gov.af/Content/files/Bulletin_81.pdf) (last visited Nov. 11, 2018).

<sup>57</sup> *Id.* ¶ VII (emphasis added).

designed specifically to further the recognition and enforcement of judgments resulting from private party choice of court.<sup>58</sup> While the signature must be followed by ratification for the Hague Convention to become effective in China, it is a clear indication that China wants to have a global role in this area of the law. Moreover, China has been an active participant in the Judgments Project of the Hague Conference on Private International Law, with the goal of completing a global Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters at a diplomatic conference in 2019.<sup>59</sup>

In January 2018, China announced plans to establish specialized international commercial courts to supplement the Belt and Road Initiative.<sup>60</sup> These courts are to provide litigation, mediation, and arbitration “solutions” to commercial disputes.<sup>61</sup> International Commercial Courts were established at Shenzhen and Xi’an on June 29, 2018, with a third expected in Beijing.<sup>62</sup>

On March 5, 2018, the International Chamber of Commerce (ICC) Court announced the establishment of a commission to address dispute resolution in relation to China’s Belt and Road Initiative.<sup>63</sup> The commission will drive the development of ICC’s existing dispute resolution procedures and infrastructure to support Belt and Road disputes.<sup>64</sup> While this development applies to arbitration,<sup>65</sup> and not to judicial decisions, it

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<sup>58</sup> *Status Table, Convention of 30 June 2005 on Choice of Court Agreements*, HAGUE CONFERENCE ON PRIVATE INT’L LAW, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> (last updated Aug. 23, 2018).

<sup>59</sup> *The Judgments Project*, HAGUE CONF. ON PRIV. INT’L L., <https://www.hcch.net/en/projects/legislative-projects/judgments> (last visited Sept. 8, 2018).

<sup>60</sup> *China to Establish Court for OBOR Disputes*, ASIA TIMES: CHINA DIG. (Jan. 25, 2018, 5:20 AM), <http://www.atimes.com/article/china-establish-court-obor-disputes/>.

<sup>61</sup> *Id.*

<sup>62</sup> See Honghuan Liu, Xi Zhou, Li Haifeng & Paul Teo, *SPC Launches International Commercial Courts in Shenzhen and Xi’an*, GLOBAL ARB. NEWS (July 11, 2018), <https://globalarbitrationnews.com/spc-launches-international-commercial-courts-in-shenzhen-and-xian/>; *Comments on China’s International Commercial Courts*, SUP. PEOPLE’S CT. MONITOR (July 9, 2018), <https://supremepeoplescourtmonitor.com/2018/07/09/comments-on-chinas-international-commercial-courts/> (The website for the Courts may be found at <https://cicc.court.gov.cn/html>).

<sup>63</sup> Mingchao Fan, Briana Young & Anita Phillips, *Belt and Road: Supporting the Resolution of Disputes*, KLUWER ARB. BLOG (Apr. 16, 2018), <http://arbitrationblog.kluwerarbitration.com/2018/04/16/belt-road-supporting-resolution-disputes/>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* (“the ICC Belt and Road Commission’s main objective is to raise awareness of the ICC as a ‘go-to’ institution for disputes arising out of China’s Belt and Road Initiative”).

demonstrates the broader commitment to internationalizing China's approach to private party dispute resolution.

One final development represents a matter of what has not occurred. In 2017, there was discussion of a statement of the Supreme People's Court on the recognition and enforcement of foreign judgments. In the sixth draft, of June 2017,<sup>66</sup> that document contained language which translates as follows:

The recognition and enforcement of foreign judgments is an important part of China's international judicial assistance. With the continuous deepening of China's opening to the outside world and the rapid development of international trade and investment, international civil and commercial exchanges have become increasingly close. Civil and commercial disputes involving foreign countries have continued to emerge. The importance of transnational civil and commercial dispute resolution and the recognition and enforcement of foreign judgments in China has become increasingly prominent. After the central government put forward the "One Belt and One Road" major strategic decision, the Supreme People's Court issued a number of opinions on the provision of judicial services and guarantees for the "Belt and Road" initiative by the People's Court, and clearly stated that it is necessary to strengthen international justice in countries along the "Belt and Road" initiative, in order to assist and effectively protect the legitimate rights and interests of Chinese and foreign parties. This includes the promotion of the mutual recognition and enforcement of judicial decisions in countries along the route. If some countries along the route have not yet concluded an agreement on mutual legal assistance with China, according to international judicial cooperation and exchange of intentions, and the other country's commitment will give China judicial reciprocity, etc., it may be considered that our country's courts will first give judicial assistance to the other party's country and actively promote it.<sup>67</sup>

Unfortunately, the process to conclude and issue a final version of this Statement of the Supreme People's Court was blocked by the Standing Committee of National People's Congress of the PRC.

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<sup>66</sup> *Sixth Draft of Supreme People's Court on Recognition and Enforcement of Foreign Courts Provisions on Certain Issues Concerning Civil and Commercial Judgments* (Google Translate English version), copy on file with the author.

<sup>67</sup> *Id.*

## V. CONCLUSION

The Wuhan Intermediate Court's June 2017 decision in *Liu Li v. Tao Li & Tong Wu*,<sup>68</sup> is both an interesting development on its own and in the context of the Belt and Road Initiative first announced by President Xi in 2013. On its own, the *Liu* decision opens the door for the recognition of future U.S. judgments in China. This is a major development in the law. While the case leaves open the question of the extent of reciprocity assumed, and whether reciprocity with California equates to reciprocity with all of the United States, it otherwise took a rather broad approach to judgments recognition, giving effect to a default judgment for which service of process had been by publication, and finding *de facto* reciprocity to exist in the absence of a treaty obligation of *de jure* reciprocity.

The broader context for the *Liu* decision is the entire Belt and Road Initiative. When viewed in that context, the decision appears to be only one part of a very significant opening of the Chinese legal system in the realm of judicial cooperation. The case and related developments demonstrate an understanding that, if China is to move from being primarily a host state for international investment to being a major investor in other states along the Belt and Road land and sea routes, it will need to be the beneficiary of more liberal judgments recognition and enforcement in other countries. The reciprocity granted in the *Liu* case and discussed in related Belt and Road documents seems clearly to be intended to be reciprocity to be received as well.

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<sup>68</sup> Liú, *supra* note 1.

## APPENDIX

### CIVIL RULING OF THE INTERMEDIATE PEOPLE'S COURT OF WUHAN, HUBEI PROVINCE OF CHINA

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Liu LI

v.

Tao Li & Tong Wu

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(2015) E Wuhan Zhong Min Shang Wai Chu Zi No. 00026  
06-30-2017

[Translation]  
YUTING XU

October, 2017

## Table of Contents

### A. Case identification

**DATE OF DECISION:** 06-30-2017 (June 30, 2017)

**JURISDICTION:** People's Republic of China

**TRIBUNAL:** Intermediate People's Court of Wuhan, Hubei Province of China<sup>69</sup>

**JUDGE(S):** Zhao Qianxi (Chief Judge), Yu Jie and Xiong Yanhong

**CASE NUMBER:** (2015) E Wuhan Zhong Min Shang Wai Chu Zi No. 00026 Civil Order

**CASE NAME:** Liu Li v. Tao Li and Tong Wu

**CASE HISTORY:** Los Angeles Superior Court (No. EC062608)

### B. Citations to case text

**ORIGINAL LANGUAGE** (Chinese): <http://en.pkulaw.cn/display.aspx?cgid=1970324846321640&lib=case>

**TRANSLATION** (English): Text presented below

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<sup>69</sup> China has a four-level system of courts: the Supreme People's Court (最高人民法院) and three levels of local people's courts—the High People's Court (高级人民法院), the Intermediate People's Courts (中级人民法院) and the Basic People's Courts (基层人民法院), and the Courts of Special Jurisdiction (专门法院).

Foreign-related civil and commercial cases of first instance are governed by the Intermediate People's Court and the High People's Court. The High People's Court has jurisdiction over those cases that have significant influence in their respective jurisdictions. The first instance of this case is the High People's Court. The Supreme People's Court supervises the administration of justice by all subordinate "local" and "special" people's courts.

**C. Case text (English)*****Liu Li v. Tao Li et al.*****30 June 2017**Translation by Yuting Xu<sup>70</sup>**Applicant:** Liu Li

Represented by Chen Guanlin, attorney of Hunan Jinqiu Law Firm

**Respondent:** Tao Li

Represented by Chen Hang, attorney of Hubei S&amp;H Law Firm

**Respondent:** Tong Wu

Represented by Chen Hang, attorney of Hubei S&amp;H Law Firm

**PROCEDURAL POSTURE:**

After accepting an application of Liu Li for recognition and enforcement of a civil judgment of a foreign court against Tao Li and Tong Wu on October 19, 2015, this Court formed a collegial bench, and held two sessions on December 25, 2015, and March 15, 2016 to examine the application. Liu Li and Tao Li and Tong Wu, and both parties' attorneys attended the sessions. The hearing of the case has been concluded.

**BASIC FACTS:**

Applicant Liu Li claims that:

On September 22, 2013, Liu Li (Liu) concluded a Share Transfer Agreement with the two respondents, Tao Li (Tao) and Tong Wu (Tong) providing that Tao should transfer 50% of the shares of Jiajia Management Inc., a registered American Company, to the applicant for 150,000 USD. After Liu paid 125,000 dollars according to the agreement, Tao and Tong disappeared with the money. After Liu reported to the local Police Office and got no result, Liu brought a lawsuit against the respondents at the Los Angeles Superior Court in California, U.S. On July 24, 2015, the Court decided in a judgment No. EC062608, holding that the respondents should return the applicant 125,000 USD, with pre-judgment interest of 20,818 USD (calculated from September 25, 2015 to May 25, 2015) and the court fee of 1,674 USD, totaling 147,492 USD. The judgment had taken effect, and the

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<sup>70</sup> Yuting Xu, LL.M. from the University of Pittsburgh School of Law (2016–2017), Master of Law (Shanghai University of Political Science and Law, 2013–2016), LLB (SHUPL, 2009–2013).



respondent failed to fulfill the judgment. The respondents now live and have assets for enforcement in Jiangnan District, Wuhan City, Hubei province, China. The U.S. No. EC062608 does not violate the fundamental principles of Chinese legal system, or the national sovereignty, security and social interests of China. Therefore, to protect her legal right, Liu requests the court: (1) to recognize the U.S. judgment No. EC062608 of the Los Angeles County Superior Court, CA in the territory of the People's Republic of China; (2) to enforce the U.S. judgment No. EC062608, that the respondents to return the applicant 125,000 USD, with pre-judgment interest of 20,818 USD (calculated from September 25, 2015 to May 25, 2015) and the court fee of 1,674 USD, totaling 147,492 USD or 940,040.26 RMB (at the exchange rate on September 12, 2015), as well as post-judgment interest from May 25, 2015, to the end of the enforcement; (3) order the respondents to bear the enforcement costs.

The respondents argue that:

(1) the U.S. judgment No. EC062608 of the Los Angeles County Superior Court, CA is not enforceable in the territory of the People's Republic of China, they did not get due notice of the U.S. court proceedings; (2) the Share Transfer Agreement concluded between Liu and Tao is real, legal and effective, so Tao and Tong should not return the payment to Liu. Accordingly, Respondent pleads that this court deny Applicant's requests.

After reviewing the case, this Court found that:

On September 22, 2013, the respondent Tao and the applicants Liu concluded a Share Transfer Agreement in the United States, providing that Tao should transfer 50% of the shares of Jiajia Management Inc., registered in California, American to Liu. Liu paid 125,000 USD to Tao on 22 and 25 September 2013. The respondent Tong is Liu's husband. Tong's Bank account information providing by Liu showed that 125,000 USD was transferred to his bank account from 14 September to 16 October 2013. After that, on 17 July 2014, Liu brought a lawsuit (Case Number: No. EC062608) against Tao and Tong at the Los Angeles Superior Court in California U.S., alleging that the two respondents defrauded her for the 125,000 USD by fabricating the share transfer. On 7 October 2014, U.S. Rolan Service Company issued an investigation report regarding Tao's and Tong's personal information and contact address in the United States. Liu's U.S. lawyer sent relevant litigation documents by post to Tao and Tong's address according to the investigation report, but the service was unsuccessful.

On 8 January 2015, Judge William D. Stewart of Los Angeles Superior Court ordered that the subpoena and notices related to this case should be published as public announcements at the *San Gabriel Valley Tribune*. The announcements were then published continuously for four times on the *San Gabriel Valley Tribune* on 15, 22, 29 January and 5 February 2015. On 24 July 2015, Judge William D. Stewart issued a default judgment, holding that Tao and Tong had been properly summoned and did not appear in the court to respond to the applicant's complaint, and this constitutes a default judgment. The Court ordered Tao and Tong to return the applicant 125,000 USD with pre-judgment interest of 20,818 USD (calculated from September 25, 2015 to May 25, 2015 at the daily interest rate USD 34.24) and the court fee of 1,674 USD, totaling 147,492 USD. Liu's U.S. lawyer issued the registration and notification of this default judgment at the same day. The evidence submitted by the applicant, "[t]he first case that the United States' Court recognized and enforced a Chinese Monetary Judgment" which is published in *Chinese Journal of Law* on January 2010, showed that Hubei People's Supreme Court's judgment of *Hubei Gezhouba Sanlian Industrial Co., Ltd. et al. v. Robinson Helicopter Co., Inc.* has been recognized and enforced by a U.S. court.

#### COURT'S OPINION:

This Court holds that:

This case is the application for the recognition and enforcement of disputes in foreign courts. Article 281 of "*Civil Procedure Law of the People's Republic of China*" states that "[i]f a legally effective judgment or written order made by a foreign court requires recognition and enforcement by a people's court of the People's Republic of China, the party concerned may directly apply for recognition and enforcement to the Intermediate People's Court of the People's Republic of China, which has jurisdiction. The foreign court may also, in accordance with the provisions of the international treaties concluded or acceded to by that foreign country and the People's Republic of China or with the principle of reciprocity, request recognition and enforcement by a People's Court."<sup>71</sup> Article 282 states that:

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<sup>71</sup> *People's Republic of China Civil Procedure Law*, CHINALAW.GOV (July 5, 2017) [http://www.chinalaw.gov.cn/art/2017/7/5/art\\_11\\_205602.html](http://www.chinalaw.gov.cn/art/2017/7/5/art_11_205602.html) (original text "第二百八十一条:外国法

“In the case of an application or request for recognition and enforcement of a legally effective judgment or written order of a foreign court, the People’s Court shall, after examining it in accordance with the international treaties concluded or acceded to by the People’s Republic of China or with the principle of reciprocity and arriving at the conclusion that it does not contradict the primary principles of the law of the People’s Republic of China nor violates State sovereignty, security and social and public interest of the country, recognize the validity of the judgment or written order, and, if required, issue a writ of enforcement to execute it in accordance with the relevant provisions of this Law; if the application or request contradicts the primary principles of the law of the People’s Republic of China or violates State sovereignty, security and social and public interest of the country, the people’s court shall not recognize and execute it.”<sup>72</sup>

In this case, this Court has jurisdiction over the case, since Tao and Tong own real estate in Wuhan City and this Court is the court of their habitual residence.

Liu has provided a copy of the U.S. EC062608 judgment, which has been verified as the authentic one, and its Chinese translation in adjunction with the application of the recognition and enforcement, which meets the formality requirements of judgment recognition and enforcement in China. Since the United States and China have not concluded or jointly participated in any judgment recognition and enforcement international agreements, the doctrine of reciprocity should be applied to Liu’s application.

After the examination, Liu has provided evidence of U.S. court precedent that recognized and enforced a Chinese judgment, which shows the reciprocal relationship of mutual recognition and enforcement has been established between the two countries. Moreover, the U.S. judgment of the

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院作出的发生法律效力判决、裁定，需要中华人民共和国人民法院承认和执行的，可以由当事人直接向中华人民共和国有管辖权的中级人民法院申请承认和执行，也可以由外国法院依照该国与中华人民共和国缔结或者参加的国际条约的规定，或者按照互惠原则，请求人民法院承认和执行。”。

<sup>72</sup> *Id.* (Original text: “第二百八十二条: 人民法院对申请或者请求承认和执行的外国法院作出的发生法律效力判决、裁定，依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则进行审查后，认为不违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，裁定承认其效力，需要执行的，发出执行令，依照本法的有关规定执行。违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，不予承认和执行。”)。

Los Angeles County Superior Court, CA addresses the share transfer contractual relationship between the applicant and the respondents, recognition and enforcement of this civil judgment does not contradict the primary principles of the law of the People's Republic of China nor violate State sovereignty, security and social and public interest of the country.

The two respondents also argued that they did not get notice to participate from the United States Court. According to this Court's finding, the U.S. judgment has explicitly indicated that it is a default judgment and Liu has submitted evidence such as the investigation report, the U.S. court order of service by public announcements, and announcements published on the U.S. newspaper. Therefore, this court holds that the Los Angeles Superior Court has properly summoned Tao and Tong in the United States and this argument is not supported.

Tao and Tong's arguments about whether the Share Transfer Agreement is real, legal and effective and that they should not return the payment to Liu, is not supported by this Court, too. This case is a case of judicial assistance, the court has no need to review the relationship between the rights and obligations of each of the parties. Where the U.S. court has made a judgment about this issue, the court shall not consider the merits of that judgment.

On this basis, this Court supports the applicant's claim to recognize and enforce the U.S. judgment. The post-judgment interests from 25 May 2015 (when the U.S. judgment was rendered) to the date that Tao and Tong will fulfil the judgment is not supported, since this does not belong to the judgment recognition and enforcement proceeding.

After the collegiate bench's deliberation:

According to Article 154(1)(11), Article 281, Article 282 of "*Civil Procedure Law of the People's Republic of China*," and Article 543(1), Article 546(1) of "*Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*," this Court:

- (1) recognize and enforce the U.S. judgment No. EC062608 of the Los Angeles County Superior Court, CA;
- (2) Dismiss the other requests of the applicant Liu Li.

The application fee of this case is RMB 100, which is borne by the respondent Tao Li and Tong Wu.

Chief Judge: Zhao Qianxi

Judge: Yu Jie

Judge: Xiong Yanhong

June 30, 2017

Clerk: Xu Lei